IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4477 OF 2007

Mr. B. Shama Kotian .. Petitioner.

V/s.

1. Meghraj G. Pamnani & Ors. .. Respondents.

Mr.R.A.Thorat i/by Gupta & Gupta for the petitioner.

Mrs. Ranjana Parikh for the Respondent No.3.

CORAM : S. A. BOBDE, J.

DATED : 29th SEPTEMBER, 2007.

P.C. :-

. Rule, returnable forthwith. Heard by consent.

2. The petitioner is an obstructionist in the notice filed by the the respondent decree holder. The petitioner proposes an amendment to his reply, which has been rejected by the executing court. The petitioner has challenged that order by way of present petition.

3. It appears from the schedule to the proposed amendment that the petitioner proposes an amendment for incorporating the fact of an earlier proceedings being S.C. Suit No. 718/1966, in which he was impleaded as a

defendant. It appears that perhaps the petitioner wanted to point out that the earlier suit was settled out of the court and in those proceedings he was accepted as subtenant. There is no dispute and the learned counsel for the respondents fairly stated that a reference has already been made to those earlier proceedings in the evidence, however, only certified copy was not produced.

4. The learned appellate court appears to have rejected the proposed amendment not on the ground that it is not relevant to the case but mainly on the ground that by the proposed amendment, the petitioner is seeking an opportunity to produce the record and proceedings of the city civil court in S.C. Suit No. 718/1966. The learned appellate court seems to be of view that it is not possible to accept the petitioner's contention that he was not in possession of the proceedings bearing S.C.Suit No. 718/1966 and that too on the ground that the petitioner is now seeking to raise a new plea. Having regard to the circumstances of the case and particularly, the fact that the pleadings are in respect of court proceedings and there is no reason to doubt the genuineness of the proposed amendment. In my view the amendment ought to have been allowed. One cannot imagine the reason why the

petitioner would have deliberately withheld referring to the earlier court proceedings had they been in his possession. In view of the fact that, admittedly, the proceedings now sought to be pleaded do not constitute a new plea. It is clear that the amendment would not cause any prejudice to the other side or take the other side by surprise.

5. In the result, the writ petition is allowed in terms of prayer clause (a). Amendment to be carried out within a period of two weeks from today.

6. Rule is made absolute, accordingly. Certified copy expedited.

(S.A.BOBDE,J.)

.....